

KENTUCKY BAR ASSOCIATION

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A RESOLUTION RECOGNIZING MARCH 18, 2003 AS *GIDEON DAY* THROUGHOUT THE KENTUCKY BAR ASSOCIATION AND SUPPORTING A REASONABLE FUNDING LEVEL FOR KENTUCKY'S PUBLIC DEFENDERS.

WHEREAS, Clarence Earl Gideon, a 51-year-old man with an eighth-grade education, was charged with breaking into a Florida poolroom on June 3, 1961 and stealing coins from a cigarette machine. He said that he was innocent.

WHEREAS, Gideon's request for counsel was denied by the State of Florida trial judge. Gideon was forced to defend himself against the case presented by the state's prosecuting attorney. Gideon tried to cross-examine the witnesses against him. He was convicted of felony breaking and entering with intent to commit a misdemeanor, and was sentenced to five years in state prison.

WHEREAS, Gideon submitted a handwritten petition to the United States Supreme Court from his Florida prison cell, arguing that the United States Constitution does not allow poor people to be convicted and sent to prison without legal representation. Twenty-two state attorneys general submitted a brief supporting him.

WHEREAS, on March 18, 1963, the Supreme Court unanimously ruled that Gideon's trial and conviction without the assistance of counsel was fundamentally unfair and violated the Sixth and Fourteenth Amendments to the United States Constitution. It is an "obvious truth," the Court stated, that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

WHEREAS, at his retrial with the assistance of counsel, Clarence Earl Gideon was found to be not guilty. This acquittal occurred partly as a result of appointed counsel's cross-examination of the taxi cab driver upon whose testimony Gideon had been convicted at the first trial.

WHEREAS, as a result of the *Gideon* decision, all states are now obligated to provide court-appointed counsel to persons who have been charged with a crime who are too poor to afford an attorney.

WHEREAS, later Supreme Court decisions have further expanded the states' obligation to provide counsel to accused individuals who cannot afford to hire a private attorney – most recently, misdemeanor defendants receiving a suspended sentence (*Alabama v. Shelton*). This obligation exists even as state budget revenues shrink and the pressure to cut expenditures grows.

WHEREAS, 40 years later, implementation of the right to counsel is uneven across the nation in terms of quality of representation, funding, staffing, training, caseloads, and timeliness of appointment. The importance of *Gideon*'s promise of equal justice has been reaffirmed by recent exonerations of the innocent as a result of DNA evidence including two such exonerations in Kentucky, and revelations of deficient and underfunded indigent defense systems.

WHEREAS, Kentucky has long recognized the right to counsel in Section 10 of the Kentucky Constitution and decisions of the appellate courts.

WHEREAS, in *Gholson v. Commonwealth*, Kentucky's highest court in 1948 stated that "common justice demands" that an attorney must be appointed when a person charged with a felony cannot afford to hire his own counsel.

WHEREAS, members of the Kentucky Bar Association have long represented indigents accused of crimes at little or no fee for many years before and after the *Gideon* decision. In *Bradshaw v. Ball*, the Kentucky Court of Appeals held that forcing lawyers to represent poor persons charged with a crime without compensation was unconstitutional.

WHEREAS, the Department of Public Advocacy was created in 1972 when House Bill 461 was passed by the General Assembly at the request of Governor Wendell Ford in order to implement fully in Kentucky the mandates of the *Gideon* decision.

WHEREAS, most recently in 1999, Kentucky's *Blue Ribbon Group*, upon which two Kentucky Bar Association Presidents served, found that the Kentucky public defender system was the poorest funded system in the country in terms of defender salaries, funding per case, and funding per capita.

WHEREAS, much progress with Kentucky's public defender system has been made since 1999, but recent budget reductions coupled with an increase in caseloads threaten to undermine that progress.

WHEREAS, the Department of Public Advocacy today represents over 108,000 persons each year who cannot afford to hire an attorney to represent them.

WHEREAS, Kentucky's public defenders, both public and private, number over 400 lawyers and staff, and include persons who have made representing the poor their career and vocation.

WHEREAS, numerous private lawyers continue to serve as contract public defenders at considerable cost to them.

WHEREAS, the Department of Public Advocacy, having had its budget reduced 4% during FY01 and FY02, is now faced with the prospect of a 2.6% budget reduction in FY03 and a 5.2% budget reduction in FY04.

WHEREAS, Kentucky public defenders opened an average of 435 cases during FY02, 7.2% more than the previous year.

WHEREAS, rising caseloads and a declining budget threatens the quality of services being rendered by Kentucky's public defenders.

WHEREAS, the Kentucky Public Advocacy Commission, which includes representatives of the Kentucky Bar Association, has called upon the Kentucky Bar Association Board of Governors to take action to avoid a crisis in the delivery of public defender services in Kentucky.

NOW, THEREFORE,

Be it RESOLVED by the Board of Governors of the Kentucky Bar Association:

Section 1. That March 18, 2003 is hereby designated as Gideon Day throughout the Kentucky Bar Association.

Section 2. That the Kentucky Bar Association hereby rededicates itself to the principle of equal justice for all regardless of income.

Section 3. That the Kentucky Bar Association Board of Governors hereby calls upon the Governor and the General Assembly to ensure that budgetary reductions that threaten the quality of services provided by and impose excessive caseloads upon Kentucky's public defenders be avoided, and that reasonable and adequate funding levels be made available to the Department of Public Advocacy during this biennium.

Section 4. That members of the Kentucky Bar Association, including representatives of prosecution, public defense, the courts, and the private bar, are encouraged to engage in appropriate commemorative activities to educate the public about the importance of equal access to justice in our great democracy, and the mandates of *Gideon*'s constitutional mandate even in the face of periodic budgetary constraints.

Section 5. That the Kentucky Bar Association Board of Governors salutes public defenders and staff throughout the Commonwealth of Kentucky for their dedication to public service.

Section 6. That commemorative copies of this resolution shall be printed and made available to local bar associations, government agencies, schools and the public, to promote ongoing understanding of and commitment to the fulfillment of *Gideon's* promise.

THIS 17th day of January, 2003.

KENTUCKY BAR ASSOCIATION

BY: 

STEPHEN B. CATRON,
PRESIDENT

ATTEST:



BRUCE K. DAVIS
EXECUTIVE DIRECTOR